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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	CITY OF LOS ANGELES,)	Case No. CV 11-06995 DDP (PLAx)
12	Plaintiff,)	
13	v.)	ORDER GRANTING MOTION TO DISMISS
14	AT&T MOBILITY LLC, a)	COUNTERCLAIM
15	Delaware limited liability)	
16	company,)	[Dkt. No. 17]
17	Defendants.)	

Presently before the court is Plaintiff City of Los Angeles' ("the City") Motion to Dismiss Counterclaim. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

I. Background¹

In July 2002, the City audited Defendant AT&T Mobility ("AT&T")'s tax liability and issued a levy (the "First Assessment") for unpaid telecommunications users tax ("user tax"). The audit report indicated that AT&T could file for administrative review of

¹ Unless otherwise noted, these facts are drawn from the Declaration of Jesse Jaregui. As discussed below, these facts, submitted for the first time in AT&T's opposition to the instant motion, may not be considered in determining whether to grant the City's motion.

1 the assessment in accordance with Los Angeles Municipal Code
2 Section 21.16. AT&T filed its appeal within the fifteen-day
3 period. In August 2002, while the appeal was pending, AT&T
4 submitted approximately \$1.1 million in unpaid user taxes to the
5 city, under protest. (Counterclaim ¶ 10) AT&T did not, however,
6 file a claim for a refund of the \$1.1 million payment.

7 The City's assessment officer denied AT&T's challenge in
8 November 2003. AT&T appealed the decision to the City's Board of
9 review. During the pendency of the appeal, the City issued a
10 second audit assessment (the "Second Assessment"), seeking
11 additional unpaid user taxes for a different time period. In
12 October 2004, the City granted AT&T's request to consolidate AT&T's
13 appeals of the two assessments. In June 2005, the City issued a
14 third assessment for unpaid user taxes (the "Third Assessment").
15 In June 2006, the City granted AT&T's request to consolidate the
16 appeals of all three assessments. AT&T did not pay the Second or
17 Third Assessments.

18 The City denied AT&T's appeal on July 9, 2008. The parties
19 entered into settlement discussions in September 2008. In July
20 2011, the City filed the instant suit in Los Angeles County
21 Superior Court, seeking over \$4.9 million in unpaid user taxes.
22 AT&T removed to this court and, on September 7, 2011 filed an
23 Answer and Counterclaim, seeking a refund of the \$1.1 million paid
24 toward the First Assessment. The City now moves to dismiss the
25 Counterclaim.

26 **II. Legal Standard**

27 A complaint will survive a motion to dismiss when it
28 "contain[s] sufficient factual matter, accepted as true, to state a

1 claim to relief that is plausible on its face." Ashcroft v. Iqbal,
2 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly,
3 550 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6)
4 motion, a court must "accept as true all allegations of material
5 fact and must construe those facts in the light most favorable to
6 the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir.
7 2000). Although a complaint need not include "detailed factual
8 allegations," it must offer "more than an unadorned, the-defendant-
9 unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949.
10 Conclusory allegations or allegations that are no more than a
11 statement of a legal conclusion "are not entitled to the assumption
12 of truth." Id. at 1950. In other words, a pleading that merely
13 offers "labels and conclusions," a "formulaic recitation of the
14 elements," or "naked assertions" will not be sufficient to state a
15 claim upon which relief can be granted. Id. at 1949 (citations and
16 internal quotation marks omitted).

17 "When there are well-pleaded factual allegations, a court should
18 assume their veracity and then determine whether they plausibly
19 give rise to an entitlement of relief." Id. at 1950. Plaintiffs
20 must allege "plausible grounds to infer" that their claims rise
21 "above the speculative level." Twombly, 550 U.S. at 555-
22 56. "Determining whether a complaint states a plausible claim for
23 relief" is "a context-specific task that requires the reviewing
24 court to draw on its judicial experience and common sense." Iqbal,
25 129 S. Ct. at 1950.

26 **III. Discussion**

27 As an initial matter, the court notes that the three-page
28 counterclaim, though it attempts to incorporate portions of AT&T's

1 answer, is largely devoid of facts. In determining whether to
2 dismiss the counterclaim, this court may not look beyond the
3 pleadings. Broam v. Bogan, 320 F.3d 1023, 1026 n.2 (9th Cir.
4 2003). The court may consider new facts raised for the first time
5 in AT&T's opposition in determining whether to grant leave to
6 amend.² Id.

7 The City argues that AT&T's Counterclaim must be dismissed
8 because it fails to allege compliance with applicable claim
9 presentation requirements and because the claim is barred by the
10 statute of limitations. (Motion at 3).

11 The parties agree that AT&T was required to present its refund
12 claim within one year of the accrual of the cause of action.³ Cal.
13 Gov. Code Sec. 911.2. Under the California Government Code, a
14 party must present a claim to a public entity by delivering or
15 mailing the claim to the entity's clerk, auditor, secretary, or
16 governing body. Cal. Gov. Code Sec. 915(a). Claims that are
17 actually received by a local entity's clerk, auditor, or secretary
18 are considered to have been adequately presented. Cal. Gov. Code
19 Sec. 915(e). The Counterclaim, however, merely alleges that AT&T
20 "exhausted its administrative remedies." Similarly, the Answer only
21 states that AT&T "appealed the assessments to the Board of Review."
22 (Answer P 8.) Nowhere does the complaint allege that the claim was
23

24 ² The court notes that the pages of AT&T's opposition are not
25 numbered, in violation of Central District of California Local Rule
26 11-3.3.

27 ³ The City maintains that Los Angeles Municipal Code Sections
28 21.07 and 21.1.12 apply to AT&T's refund claim. As the City
recognizes, however, under both the Los Angeles Municipal Code and
the California Government Code, the statute of limitations is one
year. Accordingly, the court need not address whether the Los
Angeles Municipal Code applies to the Counterclaim.

1 mailed or delivered to, or received by, any of the entities listed
2 in California Government Code Section 915.

3 Nor does the Counterclaim establish the AT&T complied with the
4 applicable statute of limitations. The Counterclaim alleges that
5 AT&T paid the First Assessment, under protest, in August 2002, and
6 makes no other mention of any relevant dates. (Counterclaim ¶
7 10). The Answer merely states that the City issued a final
8 decision on July 9, 2008, and that AT&T made certain settlement
9 requests in 2009. (Answer ¶¶ 8-9). Even assuming that AT&T did
10 sufficiently present its claim, nothing in the Counterclaim
11 indicates when AT&T did so, or establishes that the one-year
12 statute of limitations was met or tolled.

13 Lastly, AT&T's argument that the City is equitably estopped
14 from asserting the statute of limitations is not supported by the
15 allegations of the Counterclaim. A party seeking equitable
16 estoppel against the government must plead "(1) knowledge of the
17 true facts by the party to be estopped, (2) intent to induce
18 reliance or actions giving rise to a belief in that intent, (3)
19 ignorance of the true facts by the relying party, [] (4)
20 detrimental reliance," and "affirmative misconduct (not mere
21 negligence) and a serious injustice outweighing the damage to the
22 public interest." Estate of Amaro v. City of Oakland, 653 F.3d
23 808, 813 (9th Cir. 2011). The Counterclaim fails to meet these
24 requirements, as the Answer merely suggests that AT&T made certain
25 settlement requests in 2009 and that the City "acknowledged the
26 ongoing settlement process and ceased taking action." (Answer ¶
27 9).

1 Given the deficiencies of the Counterclaim, the City's motion
2 to dismiss must be granted. AT&T's opposition, however, and the
3 declarations submitted in support thereof, suggest that the City
4 did have notice of AT&T's claim. (See Declaration of Jesse Jaregui;
5 Opp. at Sec. III.C.2). The opposition also suggests that the
6 City's conduct during the course of settlement negotiations warrant
7 equitable estoppel. (Opp. at Sec. III.C.3). Accordingly, the
8 court grants AT&T leave to amend. Theme Promotions, Inc. v. News
9 America Marketing FSI, 546 F.3d 991, 1010 (9th Cir. 2008). (Courts
10 liberally grant leave to amend where justice so requires, unless
11 amendment would be futile).

12 **IV. Conclusion**

13 For the reasons stated above, Plaintiff's Motion to Dismiss
14 Counterclaim is GRANTED, with leave to amend. Any amended
15 counterclaim must be filed by January 27, 2012.

16
17 IT IS SO ORDERED.

18
19 Dated: January 20, 2012


DEAN D. PREGERSON
United States District Judge